

UTAH SCHOOL LAW UPDATE

Utah State Office of Education

March 2006

LEGISLATIVE LESSONS

The 2006 legislative session has closed with the usual mixed results.

On the downside, legislation the education community wanted to pass failed or was heavily modified. However, several pieces of legislation that the education community opposed also failed; some will undoubtedly return again.

The Legislature sent lowincome parents and students a not-so-subtle message this year, attempting on several fronts to provide advantages to higher income students.

Legislators spent many hours of debate on two bills that would have allowed students who can afford ACT prep courses to receive a high school diploma without further ado.

S.B. 204, as originally

introduced, would have required local schools to grant a diploma to any home or public school student who scored in the top 85% on the ACT and passed UBSCT. The student would not have to complete any other graduation requirements to receive the diploma (i.e., science, financial literacy or civics classes, among others).

The law was subsequently amended to give the student a "State diploma"—a non-existent document since the state office does not issue credits or diplomas.

The legislation passed the Senate and the House Education Committee but, fortunately, was not heard on the floor of the House.

A somewhat similar bill did pass the House. Sec-

ond Substitute H.B. 230 would have provided a high school diploma to a student who scored in the top 15% on the ACT or SAT and exempt the student from taking UBSCT. The student would have to meet all other graduation requirements. Due to a lack of time, the bill was not heard in the Senate.

On the other hand, legislators passed a law that may limit lower income students' access to concurrent enrollment.

The legislature passed H.B. 155 which enables higher education to charge "up to \$30 per credit hour" for concurrent enrollment classes.

The bill was originally touted as necessary because funding was not

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UPPAC CASES

- The State Board of Education suspended the educator license of Steven Bentley for four years. Mr. Bentley's suspension was the result of an inappropriate physical relationship with a female student.
- The State Board revoked the license of Michael Struiksma after he failed to respond to allegations of illegal sexual conduct with another male in a public restroom.
- The State Board accepted a Stipulated Agreement for a three-year suspension of Richard Brunson's license.
 Mr. Brunson accessed pornographic material on his school computer during school hours.

UPPAC Cases of the Month

Educators have several responses to accusations of misconduct. One is to admit the allegations are true and try to resolve the pending investigations as quickly and quietly as possible.

Another response is to threaten or blame the perceived accuser.

The most common threat is to tell the ac-

cuser that the educator is going to file a lawsuit against the accuser for defamation.

If the allegations are false, such a threat can be an effective tool.

For instance, in a case from Ohio, a parent wrote a letter claiming several "facts" about a recently hired coach.

The parent had written

to the hiring school district stating that the coach had been fired from his previous job for "supposedly having his entire team beat up on one of the players on the team. . . Mr. Rich supposedly was fingered as the instigator and urged it on."

The letter went on to

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Eye On Legislation

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provided for concurrent enrollment.

With little time remaining in the session, the Legislators finally decided to provide the full funding request. Despite this decision, the sponsor, with higher education support, continued to push for the fee option and the bill passed.

Higher education officials have stated that they are willing to forego charging students for concurrent enrollment **this year**, but the law will remain on the books for future use.

Should higher ed decide to use this new power to charge tuition, schools will be placed in the rather odd position of granting fee waivers for charges they have no say in.

Legislators also passed what one legislator termed a "mini-voucher" bill.

H.B. 181 creates, among other things, a voucher system for students in need of UBSCT remediation.

The bill allows students who fail UBSCT to receive from \$500-1,500, depending on how badly and how many UBSCT subtests they fail, for remediation. The voucher may be given to a public school, private school or other private provider for remediation. If the student passes the UBSSCT after remediation, the provider submits the voucher to the state for payment.

The bill also creates an incentive program for math achievement in grades 4-6. The legislature appropriated \$7.5 million, half of which must be used in an incentive bonus program for teachers who improve their students' test scores.

Meanwhile, a voluntary full-day kindergarten program failed to make it past the House gatekeepers. And, as Legislators were playing funding games and arguing the merits of evolution, highly needed legislation slipped through gaping holes in the process.

H.B. 253, for example, would have made a critical change in the state

truancy law, putting teeth in the threat of court action against parents who refuse to get their kids to school.

This is about the fifth year school truancy specialists have attempted to strengthen the law, and the closest they have come to success.

The bill was scuttled last year after parents' rights advocates objected. Those same advocates seemed to be silent this year, at least long enough for the bill to secure passage out of the House.

But it fell into the Senate Rules Committee in the last 10 days of

> the session, never to be heard from again.

The bill itself might have made it this year, but for game-playing between both

chambers of the Legislature (both held onto the other chamber's bills as bargaining chips in the great tax reform debate).

And so, parents who fail to get their elementary and middle school students to school can continue to ignore the schools' pleas by simply "responding" to the schools' notices that students are truant.

Another much needed bill that never made it out of Senate Rules was H.B. 155. This bill resulted from an Administrative Rules Committee meeting held during the interim. The State Board adopted a rule that enables districts to give diplomas to students who do not pass UBSCT. The diploma would note that the student failed to pass the tests, but would still be titled DIPLOMA.

Rules committee members agreed to change the state statute to reflect the State Board's actions. The law also needed to be changed to allow exemptions from UBSCT for certain students, including those who move into the

state too late to take the UBSCT and adult education students.

After some political maneuvering in the House, the bill passed and made its way to the Senate.

There, again as part of the games between the chambers, it died in Senate rules.

The State Board will not change its rule on diplomas at this point, but the tension between state law and State Board rule may need to be addressed, again.

Districts may face some radical changes after another piece of legislation made it through both chambers.

Second Substitute H.B. 77 was Rep. Dave Cox's latest attempt to create smaller school districts.

Aimed in large part at Granite District, the bill allows cities of the first and second class (65,000+ residents), and counties to conduct feasibility studies and then submit a proposal to form a new school district to voters in the city.

Senators and Representatives in Davis county spoke against the measure, noting that there is only one city in their areas with a strong commercial tax base. If that city chose to create a school district, the rest of the county would see higher property taxes without any opportunity to vote on the new district proposal.

Their laments were not heeded, however, and the bill was rushed through the process and approved with less than 15 minutes to go in the legislative session.

Meanwhile, after the Senate and the House Education Committee ran out of inflammatory, hurtful, and unsubstantiated accusations to lob against gay and lesbian clubs in schools, the House allowed two bills aimed at Gay-Straight Alliances to molder in its Rules Committee without further public debate.

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Recent Education Cases

C.N. ex rel Chhun v. Wolf (C.D. Cal. 2005). As further evidence that schools need to apply their rules consistently, a federal district court in California ruled that a student could proceed with a lawsuit against her high school principal for discriminatory discipline.

The student and her girlfriend were disciplined for a public display of affection. The student argued that heterosexual couples were not disciplined for such displays, thus the girls were discriminated against based on sexual orientation.

The court also agreed that the student may have a valid claim for invasion of privacy where the principal revealed the student's sexual orientation to her mother without the student's knowledge.

Lee v. York County School Div. (E.D. Va. 2006). A federal court upheld a principal's actions in removing a Spanish teacher's posting of religious items in his classroom.

The court found the teacher's postings were not protected by the First Amendment because they were related to the curriculum.

The teacher testified that he used the materials to attract his students' interest in Spanish. For instance, the teacher posted an article about a student who graduated from a nearby high school and was serving a mission in South America to show students how their learning can be used in the real world.

The teacher also explained that he posted some of the pictures, such as a poster of George Washington praying, because he liked the messages in the pictures.

The court ruled that the teacher was not "speaking' on a matter of public concern through his postings but was merely expressing his personal preferences and using the materials in his teaching. Therefore, the principal could remove the offending items.

Layshock v. Hermitage School District (W.D. Pa 2006). Further fodder for schools seeking to discourage students from posting on myspace.com: A high school student created, on his grandmother's computer, a parody profile of his school principal on the myspace.com site.

School policy prohibited demeaning school administrators via the Internet and causing a disruption of the school proc-

So many students tried to log onto the parodied profile, the

> school server had to be shut down, causing the school to cancel some classes and preventing students from using the computers for school related work.

The student, an Honors student with an exemplary academic

record, was suspended for 10 days, barred from attending extracurricular activities and placed in an alternative school setting.

While the court expressed some doubts about the appropriateness of the punishment, it upheld the school's decision to punish the student and noted that it would be against public policy for the court to determine the appropriate punishment in this case.

UPPAC Cases Cont.

note that the coach did not have any post-secondary education or football playing experience and that he had not been employed in any one place for very long "which may be a result of his inability to control his anger."

The letter was published in a local newspaper. As a result, the coach sued both the parent and the paper for defamation.

The parent argued his comments false statement of fact. were constitutionally protected

expressions of opinion.

The court, though noting the used of "supposedly" in the allegations, was not convinced that

the letter just expressed an opinion.

Instead, the court ruled that the parent alleged several verifiable facts. The first step in defamation suit is to show an assertion of a

Given that the letter referred to an alleged incident at a specific

school on a specific date, involving a named student, the author's opinions were clearly based on facts that could easily be verified.

The court did NOT make a finding that the coach had been defamed. It did rule that the coach could proceed to trial to prove the facts were false and the other elements of his defamation claims. Rich v. Thompson Newspapers, Inc., 2005 Ohio 6294.

Please note, however, that, if the author can prove the allegations are true, the defamation claim will fail.

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The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

Your Questions

Q: My child's school wants to put him in a remedial English class, I want him held back a year. What are my rights?

A: While a school may **and should** work with parents on the best solution for a child's academic success, the school and district have the authority over placement decisions.

That authority comes from various cases over the years that have reiterated the rights of schools to make decisions about the best uses of school resources, and the safety of individual students and the school population as a whole.

The school may not place a child in a situation that is clearly detrimental to the student. But it need not put the child in the parent's ideal setting either, par-

ticularly if that placement would be detrimental to others and the child would not be harmed by a different placement.

Q: My husband and I have separated and the school district

refuses to recognize my residency. What proof can it legally ask for?

A: A district can ask for reasonable proof of residency.

If the situation involves a separation, the district can ask for some proof that the couple is actu-

ally separated. This may include proof that the parent claiming residency has retained an attorney, such as a letter from the attorney, or copies of court filings for legal separation or divorce

The district can also insist on written documentation of residence in the form of bills with the claimed address and the parent's name, rent receipts showing the address and parent's

> name, change of address information submitted to the post office, change of driver's license address, a new checking account with the current address, or similar documentation.

While districts should avoid being punitive in their requests, a district may require several forms of documentation to establish residency.